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(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-4982

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No. 91/23

March 29, 1991

TO COUNTY ASSESSORS:

SIGNATURE REQUIREMENTS
FOR PROPOSITION 58 CLAIM FORMS

This letter sets forth our position on the signature requirements for Proposition 58 claims for exclusion from change in ownership. We have previously advised that a Proposition 58 claim form filed pursuant to Revenue and Taxation Code Section 63.1(d) must be signed by the eligible transferee, as distinguished from a qualified legal representative of the transferee. Subdivision (d) of Section 63.1 requires that the transferee file a written certification under the penalty of perjury stating that the transferee is a parent or child of the transferor. This section requires a similar certification by the transferor; however, by way of contrast, it may be submitted by either the transferor, the transferor's legal representative, or the executor or administrator of the transferor's estate.

Our legal staff reviewed the position that only the transferee can sign the certification and has concluded it is in error. They believe the courts would, most likely, consider a claim form filed on behalf of a transferee by his or her legal representative to fulfill the requirement that the transferee file a claim to certify the parent/child relationship when it is shown that the transferee is unable to sign the claim due to incompetence or some other form of incapacity. It is generally accepted law that duly appointed legal representatives, such as guardians or conservators, are entitled to perform every act that the individual for whom they are acting could have performed. Thus, if the transferee may file a claim and certify the relationship to the transferor, a duly appointed legal representative could do the same.

Based on this information, we are advising assessors to accept claims filed on behalf of incapacitated transferees by their legal representative. When a legal representative files a claim form for a transferee, the chief concern is whether the representative is duly authorized and has been given appropriate power to file this type of claim. If claims were denied because a legal representative signed the claim form on behalf of the transferee, your office may wish to notify those affected taxpayers to file appeals to protect their rights.

Since the statute specifies that the transferee is to file the certification, we will not revise the claim form to indicate that a signature from either the transferee or his/her legal representative is acceptable.


TO COUNTY ASSESSORS

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March 29, 1991

If you have any further questions, please feel free to contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,


Verne Walton, Chief
Assessment Standards Division

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